

STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION

October 10, 1997

Re: 37-0031, 97-0032, 97-0033
37-0034, 97-0035, 97-0036,
37-0037, 97-0038, 97-0039,
37-0040, 97-0041, 97-0042,
37-0043, 97-0044, 97-0045

Dear Sir/Madam:

Enclosed is a certified copy of the Order entered by this Commission.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donna M. Caton".

Donna M. Caton
Chief Clerk

Enc.



STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Resource Technology Corporation
(RTC)

Petition for a determination that an electric
generating facility fueled by landfill-generated
methane at site known as the Bi-State Landfill,
2248 Parks Road, Belleville, IL 62220, is
a qualified solid waste to energy facility as
defined in Section 8-403.1 of the Illinois
Public Utilities Act.

97-0031

Resource Technology Corporation
(RTC)

Petition for a determination that an electric
generating facility fueled by landfill-generated
methane at a site known as the McLean Co.
Landfill, R.R. 3 Box 142, Bloomington, IL
is a qualified solid waste to energy facility as
defined in Section 8-403.1 of the Illinois Public
Utilities Act.

97-0032

Resource Technology Corporation
(RTC)

Petition for a determination that an electric
generating facility fueled by landfill-generated
methane at a site known as the Beecher
Landfill 1055 W. Goodenow Road, Beecher,
Illinois is a qualified solid waste to energy
facility as defined in Section 8-403.1 of the
Illinois Public Utilities Act.

97-0033

Resource Technology Corporation
(RTC)

Petition for a determination that an electric
generating facility fueled by landfill-generated
methane at a site known as the Livingston
Landfill, 14732 East 2100 North Road, Pontiac

97-0034

97-0031-97-0045/Consol.

IL 61764 is a qualified solid waste to energy facility as defined in Section 8-403.1 of the Illinois Public Utilities Act.

Resource Technology Corporation
(RTC)

Petition for a determination that an electric generating facility fueled by landfill-generated methane at a site known as the American Grading/Lyons Landfill, 1st Avenue & I-55, McCook IL is a qualified solid waste to energy facility as defined in Section 8-403.1 of the Illinois Public Utilities Act.

97-0035

Resource Technology Corporation
(RTC)

Petition for a determination that an electric generating facility fueled by landfill-generated methane at a site known as the Kewanee Landfill, on Route 8, Kewanee, IL 61443 is a qualified solid waste to energy facility as defined in Section 8-403.1 of the Illinois Public Utilities Act.

97-0036

Resource Technology Corporation
(RTC)

Petition for a determination that an electric generating facility fueled by landfill-generated methane at a site known as the Prairie Preservation Properties Landfill, 170th Street Lansing, IL 60433 is a qualified solid waste to energy facility as defined in Section 8-403.1 of the Illinois Public Utility Act.

97-0037

Resource Technology Corporation
(RTC)

Petition for determination that an electric generating facility fueled by landfill-generated methane at a site known as the Litchfield landfill, East Route 16, Litchfield, IL 62506 is a qualified solid waste to energy facility as defined in

97-0038

97-0031-97-0045/Cansel.

Section 8-403.1 of the Illinois Public Utilities Act

Resource Technology Corporation
(RTC)

Petition for a determination that an electric generating facility fueled by landfill-generated methane at a site known as the Congress-Hillside landfill, 4100 West Frontage Road, Hillside, IL 60160 is a qualified solid waste to energy facility as defined in Section 8-403.1 of the Illinois Public Utilities Act.

97-0039

Resource Technology Corporation
(RTC)

Petition for a determination that an electric generating facility fueled by landfill-generated methane at a site, known as the Sangamon Landfill, RR #9, Sand Hill Road, Springfield, IL 62702 is a qualified solid waste to energy facility as defined in Section 8-403.1 of the Illinois Public Utilities Act.

97-0040

Resource Technology Corporation
(RTC)

Petition for a determination that an electric generating facility fueled by landfill-generated methane at a site known as the Peoria Landfill, RR # 2, Brimfield, IL 61517 is a qualified solid waste to energy facility as defined in Section 8-403.1 of the Illinois Public Utilities Act.

97-0041

Resource Technology Corporation
(RTC)

Petition for a determination that an electric generating facility fueled by landfill-generated methane at a site known as the Viola landfill, Greene Township, Mercer County, IL is a qualified solid waste to energy facility as defined in Section 8-403.1 of Illinois Public Utilities Act.

97-0042

97-0031-97-0045/Consol.

Resource Technology Corporation
(RTC)

Petition for a determination that an electric
generating facility fueled by landfill-generated
methane at a site known as the Thomas 12th
Street Disposal landfill, rural Danville, IL is
a qualified solid waste to energy facility as
defined in Section 8-403.1 of the Illinois Public
Utilities Act.

97-0043

Resource Technology Corporation
(RTC)

Petition for a determination that an electric
generating facility fueled by landfill-generated
methane at a site known as the Taylor Ridge
Landfill, 8400 77th St. West, Taylor Ridge, IL
62232 is a qualified solid waste to energy
facility as defined in Section 8-403.1 of
Illinois Public Utilities Act.

97-0044

Resource Technology Corporation
(RTC)

Petition for a determination that an electric
generating facility fueled by landfill-generated
methane at a site known as the Paxton landfill,
12201 South Oglesby Avenue, Chicago, IL
60633 is a qualified solid waste to energy
facility as defined in Section 8-403.1 of the
Illinois Public Utilities Act.

97-0045

(Consolidated)

ORDER

By the Commission:

On January 9, 1997, Resource Technology Corporation ("RTC") filed verified petitions seeking Illinois Commerce Commission ("Commission") determinations that the proposed electric generating facilities fueled by landfill methane and located at various locations throughout the State of Illinois, respectively docketed as Nos. 97-0031 through 97-0045, will be solid waste energy facilities as defined in Section 8-403.1 (b) of

the Illinois Public Utilities Act ("Act") and qualify for a contract with a utility pursuant to Section 8-403.1 (a) of the Act.

Pursuant to notice as required by law and the rules and regulations of the Commission, these matters came on for hearing before a duly authorized Hearing Examiner at the offices of the Commission in Chicago, Illinois, on February 7, 1997. RTC appeared by its President, George B. Calvert, who also testified in these proceedings. The Staff of the Commission appeared through the Office of General Counsel. Subsequent hearings, both on a consolidated and non-consolidated basis, were held on May 22, June 18, and July 7, 1997. The Hearing Examiner has consolidated these dockets for ordering purposes. At the conclusion of the July 7, 1997 hearing, the record was marked "Heard and Taken."

Section 8-403.1 of the Act provides that a qualified solid waste energy facility fueled by landfill methane may be entitled to sell electricity to an electric utility at a rate equal to the average rate paid to the utility per kilowatt hour for electricity purchased by the unit of local government in which the qualified solid waste energy facility is located. Section 8-403.1 (c) defines a "qualified solid waste energy facility" as a facility which the Commission determines (a) qualifies as a qualified solid waste energy facility under the Local Solid Waste Disposal Act; (b) uses methane gas generated from landfill gas as its primary fuel; and (c) possesses characteristics which would enable it to qualify as a cogeneration or small power production facility under the Public Utility Regulatory Policies Act of 1978 ("PURPA").

The Local Solid Waste Disposal Act defines a qualified solid waste energy facility as either (a) "a solid waste pollution control facility" or (b) "a facility which uses methane generated from landfills". 415 ILCS §101 et seq.

Summary of Evidence

The evidence shows that RTC is a Delaware corporation. RTC will own and operate the proposed small power production facilities fueled by methane to be located at various sites in Illinois. Mr. Calvert testified that he is responsible for the development and construction of the generating facilities and they will be qualifying facilities under PURPA. He stated that notices of self-certification and self-recertification describing the facilities were filed with the Federal Energy Regulatory Commission ("FERC") in connection with the facility, as provided in the FERC's regulations (18 C.F.R. sec. 292.207). Copies of these filings were admitted in evidence. All the facilities have a 20 year useful life. RTC provided proofs that each county in which a proposed facility is to be located has a solid waste energy plan approved by the Illinois Environmental Protection Agency ("IEPA"). The Commission, therefore, concludes that RTC has met the requirements of Section 8-403.1 (b) of the Act and finds them to be QSWEFs.

The evidence regarding the proposed landfills may be summarized in the following manner. The Docket 97-0031 landfill, located at 2248 Parks Road, Belleville, Illinois will

97-0031-97-0045/Consol.

have a capacity of 2 megawatts ("MW"), with a commercial operation date projected to be in the 2nd quarter of 1998. The facility is located in Illinois Power Company's ("IP's") service territory.

The Docket 97-0032 landfill, located at Rural Route 3, Bloomington, Illinois, will have a capacity of 2 MW, with a projected commercial operation date in the 2d quarter of 1998. The facility is located in Central Illinois Light Company's ("CILCO's") service territory.

The Docket 97-0033 landfill, located at 1055 W. Goodenow Road, Beecher, Illinois, will have a capacity of 6 MW, with a projected commercial operation date in the 4th quarter of 1997. The facility is located in Commonwealth Edison Company's ("ComEd's") service territory.

The Docket 97-0034 landfill, located at 14732 East 2100 North Road, Pontiac, Illinois, will have a capacity of 10 MW, with a projected commercial operation date in the 1st quarter of 1998. The facility is located in Com Ed's service territory.

The Docket 97-0035 landfill, located at 1st Avenue and I-55, McCook, Illinois, will have a capacity of 5 MW, with a projected commercial operation date in the 3d quarter of 1997. The facility is located in ComEd's service territory.

The Docket 97-0036 landfill, located at Route 8, Kewanee, Illinois, will have a capacity of 3 MW, with a projected commercial operation date in the 4th quarter of 1997. The facility is located in IP's service territory.

The Docket 97-0037 landfill, located on 170th Street, Lansing, Illinois, will have a capacity of 3 MW, with a projected commercial operation date in the 3d quarter of 1997. The facility is located in ComEd's service territory.

The Docket 97-0038 landfill, located at East Route 15, Litchfield, Illinois, will have a capacity of 3 MW, with a projected commercial operation date in the 1st quarter of 1998. The facility is located in CILCO's service territory.

The Docket 97-0039 landfill, located at 4100 West Frontage Road, Hillside, Illinois, will have a capacity of 10 MW, with a projected commercial operation date in the 1st quarter of 1998. The facility is located in ComEd's service territory.

The Docket 97-0040 landfill, located at Rural Route 9, Sand Hill Road, Springfield, Illinois, will have a capacity of 3 MW, with a projected commercial operation date in the 2d quarter of 1998. The facility will be located in CILCO's service territory.

The Docket 97-0041 landfill, located at Rural Route 2, Brimfield, Illinois, will have a capacity of 4 MW, with a projected commercial operation date in the 3d quarter of 1997. The facility is located in CILCO's service territory.

97-0031-97-0045/Consol.

The Docket 97-0042 landfill, known as the Viola landfill, Greene Township, Mercer, County Illinois, will have a capacity of 2 MW, with a projected commercial operation date in the 2d quarter of 1998. The facility will be located in IP's service territory.

The Docket 97-0043 landfill, known as the Thomas 12th Street Disposal, rural Danville, Illinois, will have a capacity of 2 MW, with a projected commercial operation date in the 2d quarter of 1998. The facility is located in MidAmerican Energy Company's ("MidAmerican") service territory.

The Docket 97-0044 landfill, located at 8400 77th Street West, Taylor Ridge, Illinois, will have a capacity of 5 MW, with a projected commercial operation date in the 4th quarter of 1998. The facility is located in MidAmerican's service territory.

The Docket 97-0045 landfill, located at 12201 South Oglesby Avenue, Chicago, Illinois, with a capacity of 5 MW, with a projected commercial operation date in the 3d quarter of 1998. The facility is located in ComEd's service territory.

Subsection 8-403.1 (e). The next step in the Commission's analysis is to determine whether the Commission is precluded from requiring the various electric utilities hereinbefore noted to enter into Section 8-403.1 contracts with RTC's proposed landfill generation facilities. Section 8-403.1 (e) provides:

The Illinois Commerce Commission shall not require an electric utility to purchase electricity from any qualified solid waste energy facility which is owned or operated by an entity that is primarily engaged in the business of producing or selling electricity, gas, or useful thermal energy from a source other than one or more qualified solid waste energy facilities.

Staff believes the Commission must determine the identity of the owner of the proposed facilities, and whether the owner is "primarily engaged" in generating energy from QSWEFs or from other energy producing sources. Staff asserts that a 50 percent measure similar to that applied by the FERC be used as the standard by which to determine ownership. The FERC measure is found in 18 CFR 292.206. Staff noted that Section 8-403.1 (e) is patterned on the CFR provision.

The Commission finds the FERC measure of "ownership" to be appropriate for Section 8-403.1 (e). In this case, however, there is no question as to the identity of the owner of the proposed generation facilities. RTC owns 100 per cent of each facility.

The next step is to determine whether RTC is "primarily engaged in the business of producing or selling electricity, gas, or useful thermal energy from a source other than one or more qualified solid waste energy facilities." Staff states that there are two parts to this analysis: determining the identity of owners, and measuring RTC's involvement with QSWEFs and other sources of energy generation.

97-0031-97-0045/Consol.

The Commission is of the opinion that QSWEFs can be facilities located only in Illinois. This interpretation is based on the language in Section 8-403.1 in conjunction with other statutory provisions related to the Retail Rate Law (415 ILCS 10/1 et. Seq.; 415 ILCS 5/1 et. Seq.; 35 ILCS 620/1 et. seq.). The Commission agrees that QSWEFs are intended to be limited to landfill methane gas generating facilities developed in Illinois. Since a QSWEF is eligible for a contract with the utility in whose territory it is located, and the Commission can order contracts only with Illinois utilities, a QSWEF *perforce* must be located in Illinois. No facility located outside of Illinois can qualify for such treatment; no facility outside of Illinois can be a QSWEF.

Regarding the measure of "primarily engaged", the Commission has determined that the employment of the maximum gross power production capacity ("PPC") of a petitioner's electricity generation facilities. (RTC owns no gas producing facilities, so no comparable measure for gas was suggested.) The PPC is explicitly defined and measurable. It is information that is required on FERC Form 556 for federal Qualified Facility designation, and so is information that is readily available. It has the advantage over actual output generated as a standard because it is not likely to vary over time, and it does not vary due to factors such as plant maintenance or breakdown or to availability of methane gas (decomposition of waste in the landfill). Staff notes that the Commission adopted a similar standard in Docket Nos. 90-0195, 96-0354/96-0378, consol. The determination of whether a petitioner is primarily engaged in generation from non-QSWEFs would be made through a comparison of the total PC of QSWEFs and total PPC of non-QSWEFs owned or operated by that petitioner. The Commission believes the standard proposed by Staff is reasonable and should be adopted.

Employing this standard, the record shows that the facilities, which RTC has proposed for QSWEF status have a PPC total of 65 MW. The Commission finds that RTC is primarily engaged in producing energy from QSWEFs, and is eligible for the contract.

Reporting Requirement. However, as Staff pointed out, the record shows that RTC intends to continue to develop non-QSWEF energy producing facilities. The record further shows that RTC believes its non-QSWEF business will be larger than its QSWEF business within five years.

It is clear that the Section 8-403.1 criteria must be met and maintained throughout the term of the contract. Failure to do so results in the suspension of the right to collect the retail rate. 83 Ill. Admin. Code 445.50 (j). By its intent to continue to develop non-QSWEF facilities, RTC has raised the strong probability that it will no longer be "primarily engaged" in producing energy from QSWEFs in the near future.

To address this situation, Staff has requested that RTC should be required to submit a bi-annual report to the Commission that details the development of all energy producing facilities owned or operated by RTC. The purpose of the report is to provide the

97-0031-97-0045/Consol.

Commission with sufficient and timely information needed to effectively address enforcement issues arising from this particular situation.

Staff suggested that the report should provide the following information:

1. the number of commercial facilities in commercial operation.
2. the number of facilities in development.
3. the stage of development of each facility.
4. the location of all energy producing facilities owned and/or operated by RTC.
5. a list of all entities having an equity interest in the facility, in order to determine ownership as defined by FERC's its ownership test found in 18 CFR 292.206 (b).
6. the maximum gross power production capacity (PPC) of each electric generation facility, and the production or sales capacity of any gas company, owned or operated by RTC, in order to determine if RTC qualifies as being primarily engaged in the in the business of producing or selling electricity, gas, or useful thermal energy from a source other than one or more qualified solid waste energy facility.

The Commission finds the Staff's request for these reports to be reasonable and necessary under the circumstances presented in these Dockets.

Reimbursement Issues. Staff also requested that RTC provide an annual report detailing the state of the reimbursement fund and its progress toward paying off its capital costs or indebtedness incurred in developing the facilities. The purpose of the report is to facilitate the Commission's enforcement authority under Section 8403.1 (d) of the Act. The Commission finds the report to be appropriate and necessary to aid in the execution of the Commission's statutory authority to direct the reimbursement of the Public Utility Fund ("Fund"). Since RTC has represented that it will voluntarily create a fund for the express purpose of reimbursing the Fund, the Commission need not consider whether it should direct that such a fund be instituted.

The record indicates that reimbursements would begin in 2007, and be completed in 2017. As noted, RTC has represented that it will create a reimbursement fund to meet these obligations.

COMMISSION FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Resource Technology Corporation, a Delaware corporation, owns generating facilities fueled by landfill methane near Westchester and Des Plaines, in Cook County, Illinois and at various other locations in Illinois;

97-0031-97-0045/Consol.

- (2) the Commission has jurisdiction over RTC and over the subject matter herein;
- (3) on January 9, 1997, RTC filed fifteen verified petitions requesting that the Commission determine that its proposed landfill methane gas fueled electric generating facilities located throughout Illinois will be qualified solid waste energy facilities pursuant to Section 8-403.1 of the Public Utilities Act;
- (4) the evidence indicates that the electric generating facilities will be configured to have a maximum gross generating capacity of approximately 65 MWs, they will be owned and operated by RTC; the facilities will use methane generated from the landfill and possess characteristics which enable them to qualify as a small power production facilities under PURPA;
- (5) under the facts set forth in Finding (4), the facilities as configured in the petition, will be qualified solid waste energy facilities pursuant to Section 8-403.1 (b) of the Act;
- (6) RTC is primarily engaged in the business of producing electricity from QSWTEFs;
- (7) RTC should file the bi-annual reports recommended by Staff regarding its energy producing facilities and annual reports regarding reimbursements as set forth in the prefatory portions of this Order.

IT IS THEREFORE ORDERED that the electric generating facilities as configured with a total gross generating capacity of 65 megawatts located in fifteen Illinois locations, which will be owned by Resource Technology Corporation and fueled by landfill methane and which will be located at the aforementioned landfills are determined to be qualified solid waste energy facilities pursuant to Section 8-403.1 (b) of the Public Utilities Act.

IT IS FURTHER ORDERED that the various electric utilities set forth in the prefatory portion of this Order shall enter into contracts to purchase electric energy from these electric generating facilities for a period beginning on the date the facility begins generating electric energy and continuing for ten years thereafter.

IT IS FURTHER ORDERED that Resource Technology Corporation shall fully comply with Finding (7) of this Order, as well as with the provisions of 83 Ill. Admin. Code 445.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

97-0031-97-0045/Consol.

By Order of the Commission this 8th day of October, 1997.

(SIGNED) DAN MILLER

Chairman

(S E A L)

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

CERTIFICATE

Re: 97-0051, 97-0032, 97-0053,
97-0034, 97-0035, 97-0036,
97-0037, 97-0038, 97-0039,
97-0040, 97-0041, 97-0042,
97-0043, 97-0044, 97-0045

I, DONNA M. CATON, do hereby certify that I am Chief Clerk of the Illinois
Commerce Commission of the State of Illinois and keeper of the records and
seal of said Commission with respect to all matters except those governed by
Chapters 18a and 18c of the Illinois Vehicle Code.

I further certify that the above and foregoing is a true, correct and
complete copy of the Order made and entered of record by said Commission
on October 8, 1997.

Given under my hand and seal of said Illinois Commerce Commission at
Springfield, Illinois, on October 10, 1997.

Donna M. Caton

Chief Clerk